

# EXHIBIT 1

Declaration of Matthew R. Mendelsohn

1 Matthew R. Mendelsohn (Admitted *Pro Hac Vice*)  
2 New Jersey Bar No. 015582005  
mmendelsohn@mskf.net  
3 **MAZIE SLATER KATZ & FREEMAN, LLC**  
103 Eisenhower Parkway  
4 Roseland, New Jersey 07068  
Telephone: (973) 228-9898  
Facsimile: (973) 228-0303  
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6 Attorneys for Plaintiffs  
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8 **UNITED STATES DISTRICT COURT**

9 **DISTRICT OF NEVADA**

10  
11 JEREMY BAUMAN, individually and on  
behalf of all persons similarly situated,  
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13 Plaintiff,

14 v.  
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DAVID SAXE, et al.;

16 Defendants  
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BIJAN RAZILOU, et al.,  
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19 Plaintiff,  
20 v.  
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V THEATER GROUP, LLC, et al.;

22 Defendants.  
23

Case No.: 2:14-cv-01125-RFB-PAL

**DECLARATION OF MATTHEW R.  
MENDELSON IN SUPPORT OF  
PLAINTIFFS' MOTION FOR FINAL  
APPROVAL**

In consolidation with

Case No.: 2:14-cv-01160-RFB-PAL

## **DECLARATION OF MATTHEW R. MENDELSON**

I, Matthew R. Mendelsohn, declare:

1. I am an attorney admitted to the Bar of the State of New Jersey. I am a partner at Mazie Slater Katz & Freeman, LLC, counsel of record for Plaintiffs in the above entitled matter. My knowledge of the information and events described herein derives from a combination of my personal knowledge and a careful review of the file, relevant court records and communications with other Plaintiffs' counsel, and if called as a witness, I could and would competently testify thereto.

2. I respectfully submit this declaration in support of Plaintiffs' Motion for Final Approval of the Class Action Settlement ("Motion").

## **Case Background**

3. Plaintiffs allege that Defendants sent uninvited text messages to cellular phone numbers using an automatic telephone dialing system without the recipient's prior express consent.

4. Mr. Bauman filed his complaint in Nevada state court in May 2014, which Defendants removed to the United States District Court for Nevada.

5. Mr. Razilou filed his complaint in the District Court in June 2014.

6. Because of the stark commonalities of the claims put at issue, Defendants asked Mr. Bauman and Mr. Razilou to stipulate to the consolidation of their complaints into one proceeding. Mr. Bauman and Mr. Razilou agreed. Thus, the District Court consolidated the two complaints. Though Mr. Bauman and Mr. Razilou are represented by different counsel, they are cooperating to advance the interests of the Class of which both Mr. Bauman and Mr. Razilou are members.

7. The Saxe Defendants filed an Answer on August 5, 2014.

8. On August 6, 2014, the Saxe Defendants filed a Motion for Demand for Security Costs, which Plaintiffs opposed.

9. On August 29, 2014, Plaintiffs filed Motions to Strike Defendants' Affirmative Defenses.

1       10. On November 18, 2014, Judge Leen issued a discovery order bifurcating  
2 discovery into class discovery and merits discovery, with class discovery to end upon the  
3 filing of a Motion to Certify Class.

4       11. Discovery then proceeded in earnest, with all parties propounding and  
5 responding to written discovery, the production and review of thousands of pages of  
6 documents and databases, depositions of the Plaintiffs and depositions of several defense  
7 witnesses.

8       12. On June 25, 2015, the parties participated in a full day mediation with Hon.  
9 William C. Pate (Ret.) in San Diego, California. Unfortunately, the parties were not able to  
10 reach a settlement at that time.

11       13. On July 27 and 28, 2015, Plaintiffs filed Motions for Leave to File Amended  
12 Complaint to include Defendant Twilio.

13       14. Plaintiffs filed an Amended Complaint with Jury Demand that included  
14 Defendant Twilio on September 1, 2015.

15       15. On September 4, 2015, the Court issued an order denying without prejudice  
16 Defendants' Motion for Demand for Security of Costs and Plaintiffs Motions to Strike  
17 Defendants' Affirmative Defenses.

18       16. On October 15, 2015, Defendant Twilio filed a Motion to Dismiss, which  
19 Plaintiffs opposed.

20       17. On October 30, 2015, the Saxe Defendants filed (i) an emergency Motion to  
21 Compel re: Discovery and Motion for Fees and Costs and (ii) a Motion for Protective Order,  
22 both of which Plaintiffs opposed.

23       18. On November 20, 2015, the Saxe Defendants filed (i) a Motion for Partial  
24 Summary Judgment on Plaintiffs' Nevada Deceptive Trade Practices Act Claims and (ii) a  
25 Motion to Stay Proceedings, both of which Plaintiffs opposed.

26       19. On November 30, 2015, Plaintiffs filed a Motion to Certify Class.

27       20. On March 21, 2016, Defendant Twilio filed a Motion to Dismiss, which  
28 Plaintiffs opposed.

1       21. On September 6, 2016, the Court held a hearing and, among other things,  
2 granted Defendant Twilio's Motion to Dismiss without prejudice and took Plaintiffs' Motion  
3 to Certify Class under submission.

4       22. On September 19, 2016, the Court denied Plaintiff's Motion to Certify Class  
5 without prejudice, with leave to refile within 7 days after the deadline for filing an Amended  
6 Complaint, to allow for possible amendment of the motion based on the Amended Complaint.

7       23. On September 27, 2016, Plaintiffs refiled their Motion to Certify Class, with no  
8 change from the original.

9       24. Defendant Saxe refiled their original Response on October 4, 2016.

10      25. Plaintiffs replied on October 11, 2016.

11      26. Defendant Twilio filed their Motion for Sanctions on November 16, 2016.

12      27. On January 10, 2019, the Court granted in part and denied in part Plaintiffs'  
13 Motion to Certify Class and denied Defendant Twilio's Motion for Sanctions.

14      28. Specifically, the Court certified the following class under Rules 23(b)(2) and (3):  
15 "All past, present, and future customers of a Saxe Defendant who reside in the United States or  
16 its territories and whose cellular telephone numbers were sent a text message by Defendant  
17 which promoted a product, good or service of a Saxe Defendant."

18      29. Further, the Court divided the class into four subclasses: (1) class members who  
19 received telemarketing text messages from the Defendants before October 16, 2013 and did  
20 not sign any form of written or electronic release, (2) class members who received  
21 telemarketing text messages from the Defendants before October 16, 2013 and signed some  
22 form of written or electronic release, (3) class members who received telemarketing text  
23 messages from the Defendants after October 16, 2013 and did not sign any form of written or  
24 electronic release, and (4) class members who received telemarketing text messages from the  
25 Defendants after October 16, 2013 and did sign some form of written or electronic release.

26      30. On January 25, 2019, the Saxe Defendants filed a Motion for Reconsideration of  
27 the Court's Certification Order (which the Court later dismissed in light of the pendency of a  
28 formal settlement agreement).

1       31. On February 21, 2019, the Saxe Defendants filed an unopposed Motion Staying  
2 Case and Continuing Case Status Hearing Pending Mediation, which the Court granted.

3       32. On May 14, 2019, Defendant Twilio filed an answer to the Amended Complaint.

4       33. On May 15, 2019, the Parties participated in a full-day mediation session in  
5 Philadelphia, Pennsylvania before the Hon. Diane M. Welsh (ret.), at which the case resolved.

6       34. Only after the Class claims were resolved did the Parties begin negotiation of  
7 attorneys' fees and the Named Plaintiffs' Service Awards. The Parties were able to resolve  
8 these issues as well.

9       35. On May 22, 2019, Plaintiffs filed an unopposed Motion to Stay the Case.

10      36. On October 28, 2019, Plaintiffs filed an Unopposed Motion for Preliminary  
11 Approval of Class Action Settlement.

12      37. On February 25, 2020 the Court held a hearing on Plaintiffs' motion and on  
13 February 26, 2020 the Court entered an Order Conditionally Certifying a Settlement Class,  
14 Preliminarily Approving Class Action Settlement, Approving Notice Plan, and Scheduling  
15 Final Approval Hearing.

16      38. Plaintiffs and Defendants have conducted an investigation of the facts and have  
17 analyzed the relevant legal issues in regard to the claims and defenses asserted in the Action.  
18 The Parties have conducted formal and informal discovery, including but not limited to  
19 propounding and responding to Requests for Production and Interrogatories.

20      39. The parties have also engaged in substantial motion practice, including a motion  
21 to dismiss, a motion to strike, motions for summary judgment, a motion for class certification  
22 and numerous significant discovery motions.

23                  **Fairness, Reasonableness, And Adequacy Of The Settlement**

24      40. I believe that under the circumstances, the proposed Settlement is fair,  
25 reasonable, and adequate and in the best interest of the Class Members. Although I strongly  
26 believe in the merits of Plaintiffs' case, I also believe that continuing this Action poses  
27 significant risks. In addition to the general risks of litigating a complex class action through  
28 trial, Defendants have raised a number of substantive defenses to liability: for example, that

1 they did not use an ATDS to send text messages; that they obtained prior written express  
2 consent before sending text messages; that Twilio played no part in the conduct at issue; and  
3 that one of the Plaintiffs allegedly spoliated evidence.

4       41. The resulting Settlement provides substantial benefits to the approximately  
5       108,798 Settlement Class Members. Under the Settlement, each and every Settlement Class  
6       Member will automatically receive—without the need to submit a claim form—two tickets to  
7       any show at the V Theater or Saxe Theater that is produced or otherwise put on by a Saxe  
8       Defendant or its successor in interest. The estimated market value of each ticket ranging from  
9       \$35.00 to \$99.99, depending on the show selected by the Class Member. Accordingly, the  
10      settlement value provided to each class member is between \$70.00 and \$199.98 and an  
11      aggregate value to the class of \$7,615,860 to \$21,757,424.

12        42. Additionally, all Settlement Class Members will receive injunctive relief. The  
13 Settlement obligates Defendants not to send automated text messages without first obtaining a  
14 written opinion from an attorney that the planned texting activity complies with the TCPA. As  
15 part of retaining an attorney to provide this opinion, Defendants will have to obtain proof that  
16 the attorney is insured under a legal malpractice insurance policy with coverage limits of no  
17 less than \$4 million per occurrence.

18        43. Separate and apart from any benefits to the Class, the Settlement also establishes  
19 a “Cash Fund” of \$800,000 for the payment of the costs of Settlement Administration,  
20 attorneys’ fees and expenses to Class Counsel, and Service Awards to Plaintiffs.

21       44. Based on my own personal experience and my review of other settlements,  
22 settlement value offered by the Settlement is similar to that made available by other class  
23 action settlements involving alleged TCPA violations.

## **SETTLEMENT NOTICE AND ADMINISTRATION**

25       48. Plaintiffs retained Angeion Group (“Angeion”) as the Notice and Settlement  
26 Administrator.

27        49. To date, Angeion has provided the required CAFA notices, sent the email  
28 and postcard notices, maintained the settlement website, and collected any class member

1 exclusions and objections. (ECF No. 240.)

2 50. Plaintiffs' counsel has monitored Angeion in all of these efforts.

3 **REACTION OF THE CLASS AS OF JUNE 4, 2020**

4 51. Class Notice has been disseminated to the 108,798 Class Members and the  
5 deadline to send an objection or request for exclusion expired May 26, 2020. As of June 4,  
6 2020, no objections have been filed and only two class members have requested to be excluded.  
7 (ECF No. 240.)

8 I declare, under penalty of perjury that the foregoing is true and correct.

9 Executed on June 11, 2020

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12 Matthew R. Mendelsohn

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